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**Mason Contractors Association of Southeast Missouri and International Union of Bricklayers and Allied Craftworkers Local Union No. 23, AFL-CIO. Case 14-CA-27724**

July 30, 2004

**DECISION AND ORDER**

BY MEMBERS SCHAUMBER, WALSH AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge filed by the Union on January 16, 2004, the General Counsel issued the complaint on March 22, 2004, against Mason Contractors Association of Southeast Missouri, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer to the complaint. On April 28, 2004, however, the Respondent withdrew its answer.

On May 4, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On June 30, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by April 5, 2004, all the allegations in the complaint would be considered admitted. On April 2, 2004, the Respondent filed an answer to the complaint. On April 28, 2004, however, the Respondent withdrew its answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.<sup>1</sup>

Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

<sup>1</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been an organization composed of various employers engaged in the building and construction industry as masonry contractors, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union.

At all material times, Foeste Masonry, Ste. Genevieve Building and Stone, Eddings Masonry, LT Masonry, and Propst Masonry have been employer-members of the Respondent and have authorized the Respondent to represent them in negotiating and administering collective-bargaining agreements with the Union.

During the 12-month period ending February 29, 2004, employer-members of the Respondent, in conducting their business operations described above, collectively purchased and received at their Southeastern Missouri facilities goods valued in excess of \$50,000 directly from points outside the State of Missouri.

We find that, at all material times, the employer-members of the Respondent have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that International Union of Bricklayers and Allied Craftworkers Local Union No. 23, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of employer-members of the Respondent within the meaning of Section 2(11) of the Act and agents of employer-members of the Respondent within the meaning of Section 2(13) of the Act:

Kenny Foeste	-	President of Association and Negotiating Committee Member, Foeste Masonry
Tim Uding	-	Negotiating Committee Member, Ste. Genevieve Building and Stone
Matt Eddings	-	Negotiating Committee Member, Eddings Masonry
Dale Propst	-	Negotiating Committee Member, Propst Masonry

The unit of employees of the Respondent (the Association Unit) set forth in the collective-bargaining agreement described below constitutes a unit appropriate for

the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about the 1960's, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Association Unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 16, 1999 through May 15, 2002.

At all times since the 1960's, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Association Unit.

On about December 22, 2003, the Union and the Respondent reached complete agreement on terms and conditions of employment of the Association Unit to be incorporated into a collective-bargaining agreement.

Since about December 22, 2003, the Union has requested that the Respondent execute a written contract containing the agreement described above.

Since about January 15, 2004, the Respondent has failed and refused to execute the agreement.

#### CONCLUSION OF LAW

By failing and refusing to execute the agreement, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since January 15, 2004, to execute a written contract containing the agreement reached on December 22, 2003, we shall order the Respondent to execute the agreement and give retroactive effect to its terms. We shall also order the Respondent to make whole the unit employees for any losses attributable to its failure to execute the agreement, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Mason Contractors Association of Southeast Missouri, Cape Girardeau, Missouri, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union of Bricklayers and Allied Craftworkers Local Union No. 23, AFL-CIO, as the exclusive collective-bargaining representative for the Association Unit, by failing and refusing to execute a written contract containing the complete agreement reached with the Union regarding the terms and conditions of employment of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute and implement a written contract containing the agreement reached by the Respondent and the Union on December 22, 2003, containing terms and conditions of employment, give retroactive effect to the agreement, and make unit employees whole for any loss of earnings and other benefits they have suffered as a result of the Respondent's failure to execute the agreement, with interest, as set forth in the remedy section of this Decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Cape Girardeau, Missouri, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 15, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 2004

_____ Peter C. Schaumber,	Member
_____ Dennis P. Walsh,	Member
_____ Ronald Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union of Bricklayers and Allied Craftworkers Local Union No. 23, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the Association Unit by failing and refusing to execute a written contract containing the complete agreement reached with the Union regarding the terms and conditions of employment of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute and implement a written contract containing the agreement reached by us and the Union on December 22, 2003, containing terms and conditions of employment, WE WILL give retroactive effect to that agreement, and WE WILL make unit employees whole for any loss of earnings and other benefits they have suffered as a result of our failure to execute the agreement, with interest.

MASON CONTRACTORS ASSOCIATION OF  
SOUTHEAST MISSOURI